The rate of tax prescribed for this substance, under section 4671(b)(3), is $4.87 per ton. This is based upon a conversion factor for ethylene of 1.00.

Polyalphaolefins

Polyalphaolefins have been determined to be a taxable substance because a review of the stoichiometric material consumption formula shows that, based on the predominant method of production, taxable chemicals constitute 99.6 percent by weight of the materials used in its production.

HTS number: 3902.90.00.50

Schedule B number: 3902.90.0050

CAS number: variable

$$\underset{\text{ethylene}}{C_2HG54}\ (n/2) + \underset{\text{hydrogen}}{H_2} \rightarrow \underset{\text{polyalphaolefin}}{C_nH_{2n+2}}$$

Polyalphaolefins are clear liquids derived from the taxable chemical *ethylene.* The predominant method of producing polyalphaolefins is by oligomerization of decene-1, a linear alpha olefin.

The stoichiometric material consumption formula for this substance is:

The rate of tax prescribed for this substance, under section 4671(b)(3), is $4.85 per ton. This is based upon a conversion factor for ethylene of 0.9961.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 90–13578 Filed 6–12–90; 8:45 am]

BILLING CODE 4830–01–M

UNITED STATES INFORMATION AGENCY

Public Diplomacy, U.S. Advisory Commission; Meeting

The United States Advisory Commission on Public Diplomacy will meet in room 600, 301 4th Street, SW. on June 13 from 10 a.m. to 11:45 a.m.

The meeting will be closed to the public from 10 a.m.–11 a.m. because it will involve discussion of classified information relating to international radio and television broadcasting. (5 U.S.C. 552b(c)(1)) Premature disclosure of this information is likely to frustrate significantly implementation of proposed Agency action, because there will be a discussion of future Agency policy and programs. (5 U.S.C. 522b(c)(9)(B))

From 11 a.m. to 11:45 a.m. the Commission will meet in open session with Mr. Nils Wessell, Director, Office of Research and Ms. Mary McIntosh, Senior Research Analyst, Office of Research.

Please call Gloria Kalamets, (202) 619–4468 for further information.

Dated: June 7, 1990.

Bruce S. Gelb,

Director.

[FR Doc. 90–13763 Filed 6–12–90; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register
Vol. 55, No. 114
Wednesday, June 13, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

DEPARTMENT OF DEFENSE

UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES

Meeting Notice

TIME AND DATE: 8:00 a.m., July 9, 1990.

PLACE: Uniformed Services University of the Health Sciences, Room D3-001, 4301 Jones Bridge Road, Bethesda, Maryland 20814-4799.

STATUS: Open—under "Government in the Sunshine Act" (5 U.S.C. 552b(e)(3)).

MATTERS TO BE CONSIDERED:

8:00 a.m. Meeting—Board of Regents.

(1) Approval of Minutes—May 18, 1990; (2) Faculty Matters; (3) Report—Admissions; (4) Report—Associate Dean for Operations; (5) Report—Dean, Military Medicine Education Institute; (6) Report—President, USUHS; (7) Comments—Members, Board of Regents; (8) Comments—Chairman, Board of Regents.

New Business.

SCHEDULED MEETINGS: September 24, 1990.

CONTACT PERSON FOR MORE INFORMATION: Charles R. Mannix, Executive Secretary of the Board of Regents, 202/295-3028.

Dated: June 8, 1990.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90-13757 Filed 6-8-90; 4:30 pm]

BILLING CODE 3810-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m., Tuesday, June 19, 1990.

PLACE: Board Room 812A, Eighth Floor, 800 Independence Avenue SW., Washington, DC 20594.

STATUS: The first two items are open to the public. The last item is closed under Exemption 10 of the Government in Sunshine Act.

MATTERS TO BE CONSIDERED:

1. Railroad Accident Report: Derailment of Southern Pacific Transportation Company Freight Train and Rupture of Calnev Pipeline, San Bernardino, California, May 25, 1989.
2. Recommendations: "Ten Most Wanted" List.
3. Opinion and Order: Administrator v. Skryack, Docket SE-8658; disposition of respondent's appeal.

News Media PLEASE Contact TED LOPATKIEWICZ 382-6605

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382-6525.

Dated: June 8, 1990.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 90-13772 Filed 6-11-90; 9:37 am]

BILLING CODE 7533-01-M

Corrections

Federal Register
Vol. 55, No. 114
Wednesday, June 13, 1990

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 51

[Docket No. FV-88-204]

Snap Beans; Grade Standards

Correction

In rule document 90-12885 beginning on page 22772 in the issue of Monday, June 4, 1990, make the following correction:

On page 22772, in the third column, in the second paragraph from the bottom of the page, "of" should read "and".

BILLING CODE 1505-01-D

DEPARTMENT OF EDUCATION

Pell Grant, Perkins Loan, College Work-Study, Supplemental Educational Opportunity Grant and Stafford Loan Programs; Revision of the Need Analysis Systems for the 1991-92 Award Year

Correction

In notice document 90-12045 beginning on page 21502 in the issue of Thursday, May 24, 1990, make the following correction:

On page 21503, in the second column, in the third column of the table, the ninth entry should read "23,000".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW-FRL-3760.7]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Denial

Correction

In proposed rule document 90-10100 beginning on page 18132 in the issue of Tuesday, May 1, 1990, make the following corrections:

1. On page 18132, under the heading "**DATES**", in the second paragraph, in the fourth line "Joseph" was spelled incorrectly.

2. On the same page, under the heading "**ADDRESSES**", in the third paragraph, in the fourth line "street" should be capitalized.

3. On page 18133, in the first column, in the second full paragraph, in the eighth line from the bottom "aquifer" was misspelled.

4. On page 18134, in the first column, in the second full paragraph, in the last line, after "Solid" insert "Waste and Emergency Response, Publication SW-846 (third edition), November 1986, and "Petitions to Delist Hazardous Wastes - A Guidance Manual," U.S. EPA, Office of Solid Waste".

5. On page 18135, in the third column, in the final paragraph, in the first line "Further" should read "Furthermore".

6. On page 18136, in the second column, in the first full paragraph, in the seventh line from the bottom "believe" should read "believes".

7. On the same page, in the third column, in the first paragraph, in the eighth line "concentration" was misspelled.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 442 and 449

[Docket No. 89N-0058]

Human and Veterinary Drugs; Editorial Amendments

Correction

In rule document 90-6284 beginning on page 11575 in the issue of Thursday, March 29, 1990, make the following corrections:

§ 442.53a [Corrected]

On page 11583, in the second column, in amendatory instruction 131 to § 442.53a, on the first line, "cefotetan" was misspelled.

§ 449.150d [Corrected]

On page 11584, in the second column, in amendatory instruction 159 to § 449.150d, in the first line, the section number was misprinted.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 90-AGL-7]

Proposed Transition Area Establishment-Eaton Rapids, MI

Correction

In proposed rule document 90-11012 beginning on page 19742 in the issue of Friday, May 11, 1990, make the following correction:

§ 71.181 [Corrected]

On page 19743, in the second column, in § 71.181, under Eaton Rapids, MI [New], in the fourth line "40°" should read "42°".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Notice No. 90-10]

List of State-Designated Routes for the Transportation of Highway Route Controlled Quantity Shipments of Radioactive Materials

Correction

In notice document 90-12043 beginning on page 21480 in the issue of Thursday, May 24, 1990, make the following corrections:

1. On page 21480, in the second column, under **ADDRESSES**, in the second line "Designated" was misspelled.

2. On the same page, in the third column, in the fifth paragraph, in the eighth line "Shipment" should read "Shipments".

3. On page 21481, in the second column, in the fifth line from the bottom of the page, "Virginia-Effective 6-13-89" should appear in bold print.

4. In the same column, in the last line, "I-6" should read "I-66".

5. In the third column, in the fourth line from the top of the page, insert "17" between "Highway" and "from".

BILLING CODE 1505-01-D

federal register

Wednesday
June 13, 1990

Part II

Department of Agriculture

Federal Grain Inspection Service

7 CFR Part 800
Shiplot Inspection Plan (Cu-Sum); Final Rule

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

7 CFR Part 800

RIN 0580-AA09

Shiplot Inspection Plan (Cu-Sum)

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Federal Grain Inspection Service (FGIS) is revising the regulations under the United States Grain Standards Act (USGSA) regarding the inspection of shiplot grain. Specifically, FGIS is revising the shiplot inspection plan by: (1) Establishing new breakpoints based on updated estimates of standard deviation; (2) limiting review inspections of material portions to one field review; (3) requiring that review inspection results of material portions be averaged with prior results unless a material error is detected; (4) defining a material error as a difference of more than two standard deviations; (5) designating a material portion as the single sublot exceeding the breakpoint value; (6) including wheat protein under the shiplot inspection plan for shipments specifying a minimum or maximum amount of protein; (7) requiring a special certificate statement when the protein range of a lot exceeds 1.0 percentage point; and (8) offering, upon request, an optional inspection service whereby component samples are analyzed. This action revises the regulations regarding the inspection of shiplot grain. The revisions include adding provisions concerning the shiplot inspection plan and establishing in the regulations procedures for review inspection services for sublots inspected as part of the inspection plan. This action will improve the statistical performance of the plan.

EFFECTIVE DATE: September 11, 1990.

FOR FURTHER INFORMATION CONTACT: Paul Marsden, Resources Management Division, USDA, FGIS, Room 0628 South Building, 1400 Independence Avenue SW., Washington, DC, 20250, telephone (202) 475-3428.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The final rule has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512-1. This action has been classified as nonmajor because it does not meet the criteria for a major rule established in the Order.

Regulatory Flexibility Act Certification

John C. Foltz, Administrator, FGIS, has determined that this final rule will not have a significant economic impact on a substantial number of small entities. Most users of the official inspection and weighing services and those entities that perform these services do not meet the requirements for small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Background

Since 1916, the United States Department of Agriculture (USDA) has established Official U.S. Standards for Grain. The standards and the inspection system serve the needs of the grain market by providing both the buyer and seller with a common language to describe grain quality through an impartial inspection process.

Determining the quality of large export grain shipments represents a difficult challenge for an inspection system. During the early years of U.S. grain exports, the quality of export shipments was determined after loading based on a single composite sample. As the size of export shipments increased, a need developed to determine grain quality during loading. In response, inspectors initially graded samples representing sublots (a portion of the entire shipment) but continued to determine the average quality for the export shipment on a single composite sample. Later, the average quality of the shipment was based on the average of the sublot results.

At first, no restrictions were placed on individual sublot results. Quality could vary between sublots provided the average quality of the entire lot met contract requirements. By 1961, a process was developed to control quality fluctuations within export shipments. The process became known as the 10 Percent Plan because it allowed, based on sublot results, no more than 10 percent of the export shipment to be inferior by one grade in quality in comparison to the certificated grade.

With any inspection plan, inspection results are subject to variability caused by sampling limitations, equipment capabilities, and inspector performance. To minimize these variabilities and maintain an impartial inspection process, USDA developed a statistically based acceptance inspection plan in 1969 which later became known as Plan A. This plan compared individual factor results to contract and grade limits through the use of: (1) Absolute limits, (2) progressive loading limits, and (3) block limits. These limits allowed some fluctuation in quality results to compensate for the inherent variability associated with grain inspection. The absolute limit established an allowance beyond the grade factor limit. A sublot was considered inferior quality and designated a material portion if a sublot factor result exceeded the absolute limit. The progressive loading limit restricted the total number of inferior quality sublots for the entire vessel. The block limit restricted the number of consecutive sublots inferior in quality for the same factor. A "block" consisted of three or more consecutive sublots that exceed the same grade factor limit but did not exceed the absolute limit. All sublots in the block were considered a material portion when a block limit violation occurred. In addition, whenever a material portion was caused by exceeding the progressive loading limits or block limits, the next five sublots loaded after the material portion designation had to be within grade on the factor that caused the material portion designation.

Plan A also incorporated a "second pick" procedure. When a sublot factor result exceeded the grade factor limit or the absolute limit, a second portion was analyzed. The average of the two analyses was used as the sublot factor result to determine if any loading limits were exceeded. Review inspections (reinspection, appeal inspection, and Board appeal inspection) were available for an entire lot or individual material portion sublots. To obtain a review inspection before a vessel was completely loaded, shippers could call a "cutoff" which designated the end of a lot. All sublots making up the lot could then be reviewed and the results certificated. Grain loaded after the "cutoff" represented another lot and was inspected and certificated separately. Material portion sublots were separately certificated even if the subsequent review inspection results were within the grade limit.

After several years of development and field testing, Plan A was implemented as an FGIS instruction on September 25, 1974, for use at shipping bin elevators. Shipping bin elevators have grain bins in which grain may be temporarily held after official sampling until the official inspection results are available. Elevators without shipping bins are commonly referred to as direct loading elevators because they do not have the capability of holding grain after official sampling while the inspector determines the quality. The 10 Percent Plan was implemented as a FGIS instruction on October 29, 1974, as an

interim procedure for use at direct loading elevators which chose not to use Plan A. The 10 Percent Plan was scheduled to expire on November 1, 1975; however, the plan was extended at the grain industry's request. Both the 10 Percent Plan and Plan A were used for export grain shipments between 1974 and 1980.

A 1977 report prepared by the USDA Office of the Inspector General cited many problems associated with shiploading and recommended that FGIS develop one plan that was applicable to all elevators. A review was conducted to evaluate the 10 Percent Plan, Plan A, and alternate inspection plans. FGIS developed a Cumulative Sum (Cu-Sum) Plan in 1979 to replace both inspection plans. The Cu-Sum Plan was designed to simplify the process of inspecting, provide the shipper with final sublot quality results, and to be applicable at all export facilities. After a year of field tests, the Cu-Sum Plan was implemented as an FGIS instruction in Book III of the Grain Inspection Handbook on May 1, 1980.

The Cu-Sum Plan is an online acceptance sampling plan that provides continuous quality information. The plan establishes statistically based factor tolerances (breakpoints) for accepting occasional portions of a lot when, due to known sampling, equipment, and inspection variations, inspection results exceed the grade limit. The individual sublot factor results are compared to the grade limit and the cumulative sum of the differences is monitored and applied to the acceptance tolerance. For example, if the grade limit for foreign material is 2.0 percent and the sublot foreign material result is 2.2 percent, the difference for the sublot is +0.2. The difference for each sublot by factor is added together during loading to derive what is known as the Cu-Sum. If the next sublot had a +0.1 difference, the Cu-Sum would be +0.3 (the sum of 0.2 + 0.1). Negative values are also added to the Cu-Sum but the overall Cu-Sum value cannot go below zero. If a factor's Cu-Sum value exceeds the breakpoint, the grain represented by the sublot is considered inferior quality and designated a material portion. If in the above example the breakpoint for foreign material was +0.4 and the next sublot had 2.3 percent foreign material, the Cu-Sum would be +0.6 thus exceeding the breakpoint and causing a material portion which is rejected by the plan. The certificated quality of the lot is the combined average of all sublots accepted under the plan. A material portion is certificated separately from sublots accepted under the plan.

The Cu-Sum Plan allows review inspections of material portion sublots as well as lots. One sublot within a material portion sequence (a series of sublots that lead to a sublot exceeding the breakpoint) may be reviewed under the plan. The reviewed sublot is certificated as part of the entire lot if the review inspection results are within the acceptable tolerance.

After nearly 6 years of use, FGIS contracted with an independent, third-party statistician, Dr. William H. Woodall, Department of Statistics, University of Southwestern Louisiana, to evaluate the Cu-Sum Plan. The statistician was selected because of the individual's expertise in the field of quality control and familiarity with Cu-Sum inspection techniques.

The study was designed to evaluate the relationship between the use of the Cu-Sum Plan, its effect on determining the quality of exported grain, and to identify possible improvements to the plan. The final report included recommendations to improve the effectiveness of the Cu-Sum Plan. The specific recommendations were: (1) Retain the basic Cu-Sum procedure but average review inspection results unless a material error is present and use a reference value smaller than the grade limit to regain the effectiveness of the original Cu-Sum Plan; (2) use an absolute limit equal to the breakpoint less the starting value; (3) revise the Cu-Sum breakpoints based on new estimates of factor result variability; and (4) improve the accuracy of the USDA rounding procedure.

FGIS already addressed the fourth recommendation by implementing revised rounding procedures on June 30, 1987 (52 FR 24414), which are more generally accepted mathematical rounding procedures. The rounding procedures appear in § 810.104 of the Official U.S. Standards for Grain (7 CFR 810.104).

Based on these recommendations and all other available information, FGIS proposed the following changes to the shiplot inspection plan: (1) Revising and updating the breakpoints for grading factors based on new estimates of standard deviation, (2) revising the review inspection procedures under the plan, (3) redesignating material portions, (4) including protein determinations as part of the inspection plan, and (5) offering optional component sample inspections.

FGIS proposed these changes in the January 23, 1989, **Federal Register** (54 FR 3050) and solicited comments for 60 days. The proposed rule was corrected on January 27, 1989 (54 FR 4109). The comment period was extended an additional 60 days in the March 3, 1989 **Federal Register** (54 FR 9054). The comment period was extended based on requests received from the U.S. grain industry indicating additional time was needed to review the proposed changes. FGIS determined that an extension of time to allow additional public input would be beneficial because it provided more time to respond to the proposed changes and might facilitate the development of effective alternative recommendations.

FGIS received 69 comments on the January 23, 1989, proposed regulations. Individual producers or producer-related groups submitted 29 comments; grain handlers, exporters, or their association representatives submitted 20 comments; foreign buyers of U.S. grain or their representatives submitted 17 comments; and individuals and associations not directly involved in producing, handling, exporting, or buying U.S. grain submitted 3 comments.

Some grain handlers, exporters, and their association representatives commented that the proposed changes and anticipated economic impact are based on flawed statistical data obtained by FGIS. They further commented that the proposed rulemaking process was arbitrary and FGIS did not cooperate with the U.S. grain industry in developing the proposed changes. The majority of comments received from grain handlers, exporters, and their association representatives expressed opposition to the proposed material portion designation. Furthermore, they commented that the proposed changes were too costly and would not significantly improve export grain quality.

Producers and foreign buyers generally submitted comments supporting the proposed rule. Some producer and producer-related groups, recognizing that grain handlers strongly opposed the proposed material portion designation, indicated they would support a modified material portion designation provided the operational characteristics of the plan remain similar to the proposed changes.

The following paragraphs address comments received regarding the proposed changes. To the extent that the comments are inconsistent with the findings and conclusions made herein, they are denied.

General Comments

Some exporters and their association representatives commented that the reasons for proposing the changes to the

shiplot inspection plan were unclear and that producers and foreign buyers believe that the proposed changes to the plan will significantly improve the quality of U.S. grain exports. FGIS disagrees with these comments.

FGIS stated in the proposal that the intent of the proposed changes was to improve the statistical basis of the inspection plan. The comments received from producers and foreign buyers indicated they recognize that a plan which improves the determination of quality may impact on the grain quality. However, their comments did not indicate they expected a significant change in quality.

The North American Export Grain Association (NAEGA), an organization representing the interests of major grain and oilseeds exporting companies and cooperatives in the United States and Canada, strongly criticized FGIS for failing to work with industry in developing an acceptable inspection plan. In their comments submitted on the proposal, NAEGA stated:

> The proposed rule arises, in our view, from arbitrary rule making by FGIS which bears greater testimony to the agency's sensitivity to political pressure than it does to the agency's commitment to serve U.S. competitiveness in world markets. This is a serious charge that we do not make lightly.
>
> FGIS did, during two years leading up to the introduction of the rule, give opportunity to interested parties to propose alternatives to the actions now contained in the rule. However, the criteria required to be served by any alternative to the FGIS plan—the response of the OC curve—were so narrowly drawn that they admitted of no alternatives that satisfied both the FGIS and the interest of affected industries in maintaining necessary competitiveness in international markets.
>
> One alternative to the FGIS plan—a proposal submitted by Dr. William Woodall of Southwestern Louisiana University—was summarily dismissed by FGIS despite the fact that FGIS itself had contracted with Dr. Woodall to perform the research. Other alternatives proposed also failed to result in any significant changes in the original FGIS proposal now promulgated as the proposed rule.
>
> In no instance during the past two years has FGIS requested that the FGIS Advisory Committee undertake a detailed review and consensus endorsement of its proposal, despite the clear Congressional intent that the Committee be accorded a role in weighing significant matters involving industries affected by FGIS regulation and oversight. Furthermore, the proposed rule does not reflect suggested changes in the material portion provisions of the rule recommended by the inter-industry Grain Quality Workshop at its December 1988 meeting.

FGIS disagrees with the views expressed by NAEGA in their comment. FGIS has not engaged in arbitrary rulemaking. On the contrary, FGIS fully cooperated with industry regarding the development of the proposed changes. As stated earlier, FGIS contracted with Dr. William Woodall, Associate Professor, Department of Statistics, University of Southwestern Louisiana, to review the shiplot inspection plan and recommend any changes needed. FGIS discussed with industry Dr. Woodall's recommendations to improve the inspection plan immediately after he released his final report. NAEGA and other industry representatives indicated during these preliminary meetings that the Woodall proposal was too restrictive. In particular, they expressed opposition to the recommendation to use a reference value smaller than the grade limit. They viewed such a change as equivalent to changing the Official U.S. Standards for Grain. FGIS recognized the industry's strong concern regarding this part of Dr. Woodall's overall recommendation. Consequently, FGIS developed an alternate recommendation.

The revised recommendation included the basic recommendations by Dr. Woodall (i.e. revise breakpoints, average review inspection results with original inspection results, and implement absolute limits). However, the recommendation to use a reference value smaller than the grade limit was replaced with a new designation of the material portion. At that time, FGIS recommended designating the material portion as the sublot exceeding the breakpoint value and all previous sublots back to, but not including, the last sublot with a zero cusum value. In addition to these requirements, FGIS recommended including wheat protein in the inspection plan.

On August 13, 1987, FGIS held a meeting in Washington, DC with individuals representing producers, grain handlers, exporters, and processors to discuss the recommended changes to the shiplot inspection plan. A significant portion of the meeting focused on the statistical performance of the inspection plan comparing Dr. Woodall's recommended changes to FGIS' recommended changes. It was also explained that the statistical improvements derived by either recommendation was dependent on the inter-relationship of the procedural changes introduced. Consequently, when evaluating the merits of the recommendations, it was important to consider all changes together.

During the meeting, industry indicated they thought the breakpoints for certain factors were too small and requested another analysis of inspection data. They further indicated that the absolute limit rule would in fact become a smaller breakpoint for factors and suggested the rule be reconsidered since the operating characteristic (OC) curve indicates it has little impact on the overall performance of the plan. The material portion designation was also debated and it was recommended that FGIS eliminate the designation entirely or consider relaxing the designation by looking at the consecutive series of sublot loaded back to the last sublot within contract grade.

FGIS continued working with industry to develop further alternatives after the August 13, 1987, meeting. FGIS worked with several individuals in evaluating their alternative procedures by providing statistical information illustrating the effects of various procedures on inspection plan performance.

The proposed changes to the shiplot inspection plan and the economic impact analysis conducted by the Economic Research Service (ERS) of USDA were also discussed at the December 14, 1988, Grain Quality Workshop. The Grain Quality Workshop passed a resolution regarding the proposed changes to the shiplot inspection plan. The resolution commended FGIS for its review of the inspection plan and the proposal which would be published for comment. The Grain Quality Workshop took exception with the new material portion designation and urged FGIS to consider alternatives which will still maintain the statistical integrity and reliability of the plan. The Grain Quality Workshop did not propose any alternative plans as part of the resolution.

The FGIS review of the inspection plan and the proposed changes were discussed at the FGIS Advisory Committee ten times since initial discussions started in January 1986 until the proposal was published in the **Federal Register** for comment.

Every effort was made by FGIS to evaluate the shiplot inspection plan in a sound statistical manner. Statisticians and quality control experts were consulted and all industry requests for further evaluation and information were considered. As requested by the export grain industry during the August 13, 1987, meeting, FGIS reviewed the original breakpoint values calculated by Dr. Woodall and made changes as warranted. Further, FGIS revised its recommendation presented at the August 13 meeting by deleting the absolute limit rule and relaxing the material portion designation.

Statistical Performance

Comments questioning the statistical performance of the plan were received from several commenters. One commenter questioned the quantitative objective of the changes while others indicated FGIS' demonstration of statistical performance was in error because the methodology to derive the statistical performance cannot predict loading strategies. FGIS disagrees with these comments for the following reasons.

FGIS relies on the operating characteristic (OC) curve to evaluate the performance of an inspection plan and any proposed changes to that plan. A comment misconception is that an OC curve predicts loading operations and target values for loading. This is not correct. OC curves predict the performance of a sampling plan based on the probability of acceptance or rejection at various quality levels.

FGIS used historical export data to determine the standard deviations for the grading factors. These standard deviations were in turn used to compute or estimate by simulation techniques the probability of a sublot meeting a set of acceptance criteria for a quality level. The plotting of the probability of acceptance for various quality levels generates an OC curve.

Simulations were performed for the more complicated sets of acceptance rules where direct computation is either not possible or highly complex. A large number of simulated sample values are generated for each quality level using the estimated factor standard deviation to obtain an accurate estimate of the probability of acceptance.

Based upon its own research, expert opinions, and industry discussions, FGIS has determined that the methodology used to calculate OC curves is correct.

Inspection plans can vary based on the needs of the buyers and sellers. Some comments received from exporters indicated they would like acceptance of their grain 100 percent of the time when the quality is within the grade limit. Some comments received from importers indicate they do not want to receive any grain which does not meet their contract specifications. To meet the needs of industry as closely as possible, FGIS has designed a plan to establish fair acceptable and rejectable quality levels.

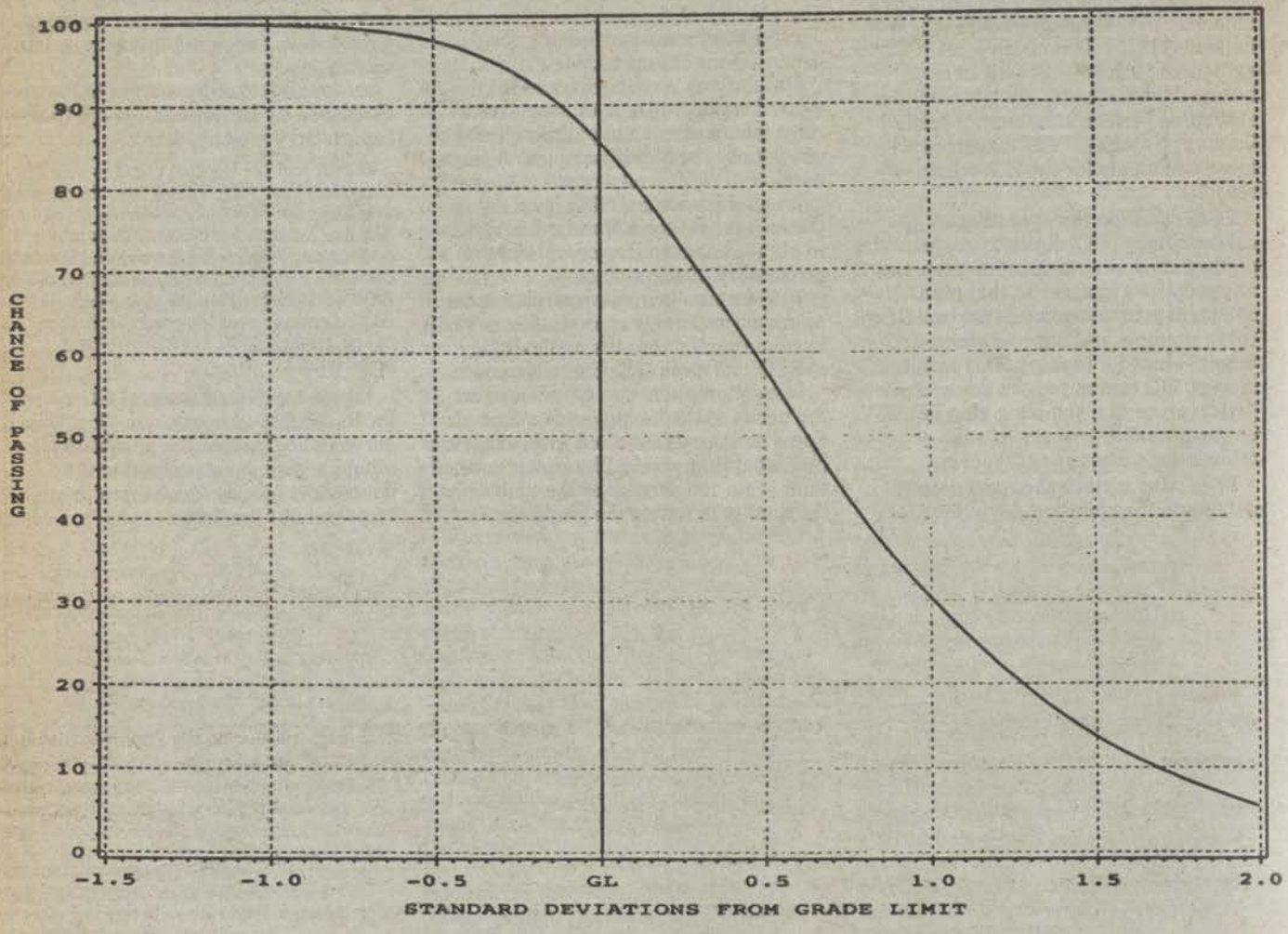
Acceptable quality levels (AQL) were discussed by Dr. Woodall in his final report. Dr. Woodall stated:

> Plan A and the Cu-Sum plan (as originally designed) have AQL values roughly one-half of a standard deviation *below* the grade limit. The desired location of the AQL is required to define an acceptable inspection plan. It is certainly a minimum requirement that the AQL be no larger than the grade limit. If the AQL is near or over the grade limit, then below-grade sublots are likely to pass undetected.

Figure 1 depicts a general OC curve for the proposed inspection plan. The curve indicates that the proposed plan would accept sublots equal to the contracted quality level approximately 85 percent of the time.

FIGURE 1

Proposed Shiplot Inspection Plan (Maximum Field Reviews)

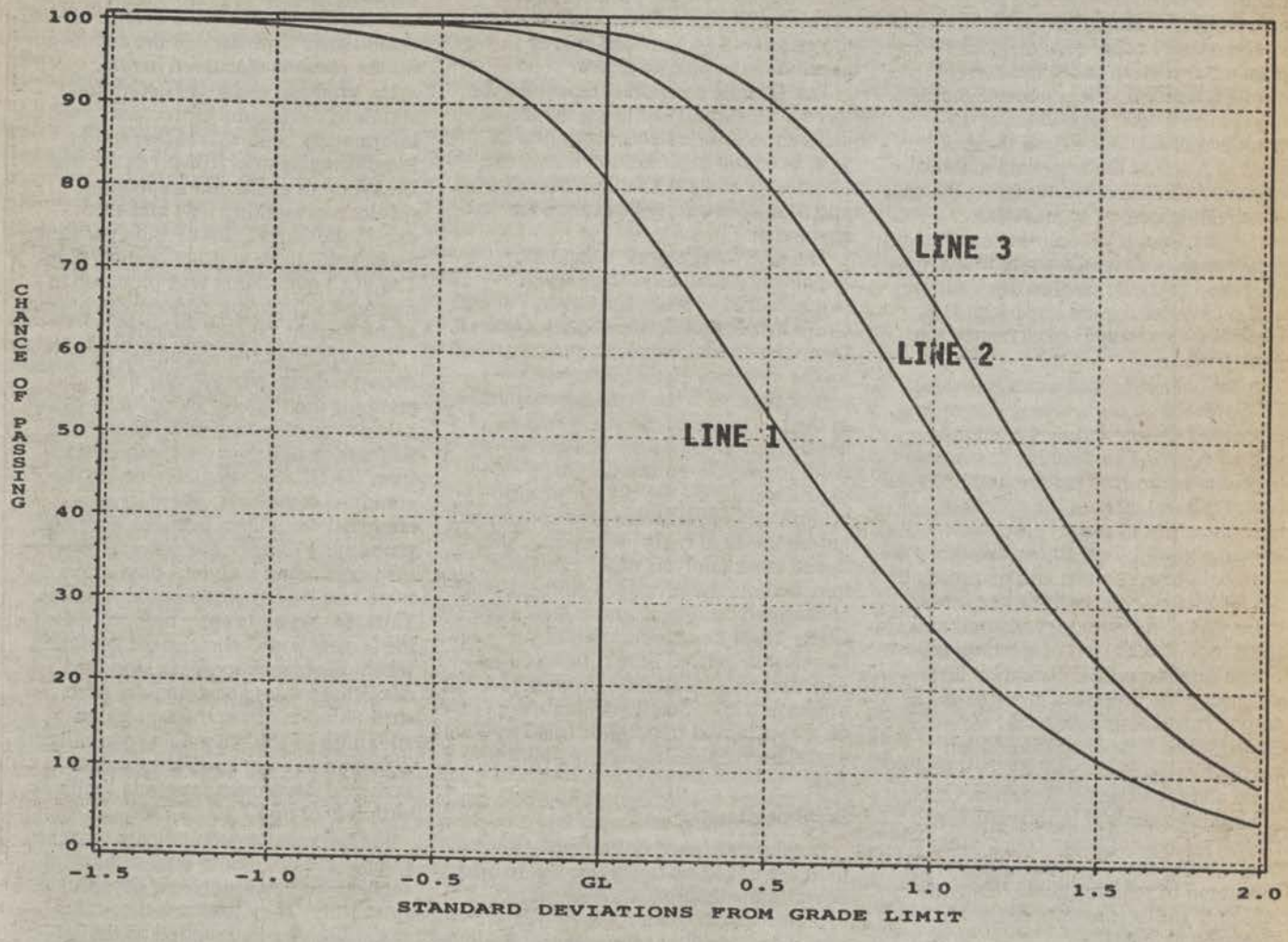


When the current shiplot inspection plan was implemented in 1980, the intent of the plan was to base all determinations on a single analysis.

Figure 2 illustrates the OC curve for the current inspection plan. Line 1 demonstrates the probability of acceptance based on an original inspection. Line 2 demonstrates the probability of acceptance based on a reinspection result when a material portion occurs. Line 3 demonstrates the probability of acceptance based on an appeal inspection result after a reinspection.

FIGURE 2

Current Plan OC Curve (Maximum Field Reviews)



The original inspection line (Line 1) crosses the grade limit at approximately 81 percent acceptance. After an applicant requests a reinspection and an appeal inspection (Line 3), the probability of acceptance approaches 99 percent. In turn, the probability of accepting grain of inferior quality as acceptable quality also increases.

In Dr. Woodall's comments to the proposed changes, he stated:

> The proposed changes to the Cu-Sum plan will result in a much better inspection plan. The quality of exported U.S. grain will improve somewhat because the grade limits will become more meaningful. . . . The current Cu-Sum plan is clearly not an effective inspection plan.

Be[illegible]-grade sublots are likely to pass undetected when the acceptable quality level is near or over the grade limit. Therefore, FGIS proposed changes to the inspection plan to provide for improvement in performance of the plan.

Economic Impact

Several commenters indicated they believed the economic impact analysis underestimates the actual economic impact of the proposed changes. Underestimation of the quantity of grain requiring improvement and the failure to factor in the cost of storing and disposing of screenings were cited as reasons for these comments. One comment questioned the determination that the proposal would not have a significant impact on a substantial number of small entities as defined under the Regulatory Flexibility Act. FGIS disagrees with the comments for the following reasons.

FGIS informed participants at a Grain Quality Workshop its intent to conduct an economic analysis of the proposed changes. The Grain Quality Workshop supported FGIS in its effort to conduct the analysis and established a working committee to assist in the analysis. After the workshop, FGIS contacted ERS to conduct the economic impact analysis.

FGIS and ERS met with the working committee to establish the parameters for conducting the economic impact analysis and to ensure analysis of important economic impact issues. Basic criteria for analysis included (1) summarizing the current inspection plan effects by elevator type and quality factor; (2) determining the effects of averaging review inspection results using more than two standard deviations as a material error definition; (3) applying the proposed changes and

reviewing all material portions one time; (4) considering the current percent of material portions as the risk acceptable to the shipper and improving grain quality to simulate this risk; (5) calculating by elevator type the average vessel quality using only original inspection results under the current plan; (6) applying the proposed changes except use a reference value of 0.5 standard deviations below the grade limit in place of the proposed material portion definition; (7) estimating the cost of adjusting quality to meet the proposed plan, (8) simulating component factor results as an alternate to the proposed material portion designation; and (9) evaluating the impact on U.S. exports if no change to the inspection plan is made.

After collecting and analyzing data, FGIS, ERS, and the working committee discussed the preliminary economic impact report. The working committee expressed concern that the preliminary report did not include the option of cleaning grain at export elevators; cleaning grain by an amount equal to the change in breakpoints; and disposing of the cleanings. Alternatives to address these concerns were investigated and were included as part of the final report.

The final report published by ERS estimated the proposed changes to the shiplot inspection plan could result in costs for the U.S. wheat, corn, and soybean industries from $15.5 million to $85.6 million, depending on how quickly the industries adapt to the proposed changes. Costs of improving grain quality, recycling, and unloading were estimated in selected scenarios with regard to industries response to the proposed changes.

The ERS report estimated the proposed changes could cost the industries approximately $15.5 million if the industries quickly improve their grain quality to maintain their current frequency of material portion occurrence (scenario No. 1). The ERS report further estimated the proposed changes could cost the industries approximately $24.4 million under a transition scenario (scenario No. 2) if the frequency of material portion occurrences doubled after improving grain quality and the rejected sublots were unloaded from ships or recycled from shipping bins. The ERS report also estimated, as the worst possible case (scenario No. 3), the proposed changes could cost industry approximately $85.6 million if the industries did not improve their grain quality over the current level. Additionally, the ERS study indicated higher quality U.S. export grain and oilseeds resulting from the proposed changes to the inspection plan could bring benefits which could offset or even outweigh the costs of improving grain quality. The benefit of improving wheat protein under the proposed plan is estimated at $5.2 million, compared to the estimated $4.1 million cost of improving the quality factor.

The specific economic impact for the three grains analyzed using the three different scenarios was estimated at $4.6, $4.9, and $19.7 million for wheat; $3.5, $10.1, and $31.1 million for corn; and $7.4, $9.5, and $34.8 million for soybeans.

The ERS final report "Economic Impacts of Changes in the Shiplot Inspection Plan Proposed by the Federal Grain Inspection Service" does address the important economic concerns raised by the changes. The basic criteria established with the working committee at the beginning of the study were considered in the ERS evaluation. Additionally, the other concerns expressed during the review of the preliminary report were also considered before the final report was published. Based upon analysis of all available information, the proposed changes were considered nonmajor under Executive Order 12291 and Departmental Regulation 1512-1. In addition, it also was determined that the proposal would not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act.

Breakpoints

Breakpoints used in the inspection plan are based on the factor's standard deviation measurement. Therefore, estimations of standard deviation are based on actual inspection data. If inspection data is not available, then statistical principles are applied to obtain these measurements.

The majority of commenters supported the proposal to revise the breakpoints, however, some commenters expressed concern. Exporters contended FGIS employed flawed statistical methodology to determine the standard deviations and breakpoint values.

In summary, the exporters' general concerns include (1) variability associated with the mechanical sampling device is not included in the determination of standard deviation; (2) inspection data in the monitoring sample data based are not unrelated or random and the inspection data base only identifies inspector variability; (3) the relationship of the breakpoint for total defects and its component factors is not correct; (4) Durum wheat breakpoints for certain factors are incorrect due to the nature of the grain; and (5) the breakpoint for broken corn and foreign material for corn, defects for wheat, foreign material for soybeans, and soybean moisture are too small. Except as otherwise noted, FGIS disagrees with these views expressed in the comments for the reasons discussed herein.

Dr. Woodall and FGIS determined standard deviations for factors based on information in the Grain Inspection Monitoring System (GIMS) data base. Dr. Woodall evaluated inspection results representing 1984 and 1985 export data and FGIS verified his values using 1985, 1986, and 1987 export data. The FGIS evaluation was provided in response to industry concerns expressed at the August 13, 1987, meeting.

Breakpoints are determined by sorting export data by percentages then grouping the data by grade limits before calculating standard deviations. Regression equations were developed from the GIMS data to determine the standard deviations. Theoretical standard deviations from the binomial probability distribution were used when inspection data standard deviations were less than their theoretical values. Thus, breakpoints were determined on the largest possible standard deviation whenever inspection data standard deviations were questionable. Also, extrapolations from the regression equations of the binomial probability distribution were used to calculate standard deviations for grade limits with few or no data.

Industry comments indicate that the sample obtained with the mechanical sampler may not represent the lot due to variability. They further believe this variability is compounded as the mechanical sampler reduces the size of the sample to obtain a sample from the initial sample. For this reason, exporters contend the variability should be considered when calculating breakpoints; especially for particle size factors.

Based on consultation with USDA statisticians, FGIS determined that the concept of including the variability of the mechanical sampling device to determine the breakpoint value is statistically invalid. The sample obtained with the mechanical sampler is a composite random sample of the lot offered for inspection. The sample for inspection is considered random and representative because the sampling device is set to obtain a sample at specific intervals during loading and the interval samples are later combined to form one sample. Although there is variability associated with the mechanical sampler, sampler variability

should not be significant when determining breakpoint values because the sample is a composite of random samples and represents lot quality. Accordingly, the methodology used to calculate the factor standard deviations is statistically correct and consistently applied.

Exporters also expressed concerns that the GIMS data used to determine standard deviations and calculate breakpoints did not include equipment variability. Additionally, they indicated the data is related because the inspectors know the results of the original inspection.

GIMS is a statistical measuring device used by FGIS to monitor the accuracy of inspection results. In order for the system to function, samples are randomly selected after the original inspection is performed; monitoring inspections are performed in a different laboratory using different inspection equipment by different personnel using different sample portions, and monitoring is performed without knowledge of original inspection results. As an additional precaution to prevent questionable data from entering into the breakpoint analysis, the theoretical standard deviation was used when the inspection data standard deviation was less than the theoretical value. Thus, questionable data were omitted from the breakpoint calculations.

FGIS is of the view that appropriate standard deviations were used to calculate breakpoint values. Further, sampling variability, equipment capabilities, and inspector variability are considered when using this data as new test samples are obtained from the file sample, different inspection equipment is used to obtain inspection results, and different inspectors grade the monitoring sample.

Commenters also stated that the breakpoint for defects in wheat should be larger than proposed because the breakpoint for one of its component factors, damaged kernels (total), is larger than the breakpoint for defects.

FGIS reviewed the mathematical and statistical theory as proposed by the commenters. "Defects in wheat" is the sum of damaged kernels, foreign material, and shrunken and broken kernels. The grade limits for U.S. No. 2 wheat for defects, damaged kernels, foreign material, and shrunken and broken kernels are 5.0%, 4.0%, 1.0%, and 5.0%, respectively. Thus, it is impossible for each factor to be at its maximum level for the U.S. No. 2 grade.

Because of the structure of the grade limits, the levels of damaged kernels, foreign material, and shrunken and broken kernels is somewhat controlled by the grade limit for defects. In order to stay within the grade limit for a U.S. No. 2 wheat, damaged kernels seldom approach the grade limit for a U.S. No. 2 wheat because the defect grade limit is very near the grade limit for damaged kernels.

The evaluation of breakpoints for the wheat factors involved analyzing and sorting data by factors. Breakpoints were established for wheat containing approximately 4.0 percent damaged kernels, although the wheat having damaged kernels at this level would probably grade as U.S. No. 3 or No. 4 due to defects. In turn, when defects were evaluated at the No. 2 grade limit, the defects were approximately at the 5.0 percent level and damaged kernels were approximately at the 2.0 percent level. The breakpoint for 2.0 percent damaged kernels is 1.0. This value is very close to the 0.9 breakpoint calculated for defects.

FGIS, after reviewing this matter, concludes that the data is representative of the wheat. Accordingly, the breakpoints for defects in wheat should not be larger as suggested by the commenters and will remain as proposed.

Another exporter voiced concerns about Durum wheat breakpoints. This comment indicated the variability of inspection for heat-damaged kernels, total damaged kernels, and contrasting class in Durum wheat differs from the other wheats because Durum wheat has a larger kernel size resulting in fewer kernels in a work portion. Recalculating breakpoints for Durum wheat were suggested.

The exporter comment regarding establishing different breakpoints for Durum wheat has merit because the work portion does contain fewer kernels than other wheats which may increase variability. FGIS, rather than establishing different breakpoints for Durum wheat at this time, will instruct official inspection personnel to increase the portion sizes when determining damaged kernels and heat-damaged kernels. Accordingly, no change to the regulations would be made. Portion sizes will be increased from approximately 15 grams to approximately 20 grams and from approximately 50 grams to approximately 66 grams when determining damaged kernels and heat-damaged kernels, respectively. This adjustment will equalize the variability of Durum wheat to other wheats, thus the same breakpoint may be used for all wheats.

Finally, exporters commenting on this proposal questioned the breakpoints for broken corn and foreign material (BCFM) for corn, defects for wheat, foreign material (FM) for soybeans, and soybean moisture. They requested FGIS increase these proposed breakpoints by one-tenth of a percentage point. FGIS reviewed the data used to determine these breakpoints and found that rounding breakpoints to the nearest tenth of a percentage point impacts on the final breakpoint value when the calculated value is near a midpoint.

Table 1 illustrates the actual breakpoint value for these factors before and after rounding.

TABLE 1.—QUESTIONABLE BREAKPOINT VALUES

Factor	Actual breakpoint	Rounded breakpoint
U.S. No. 2 Corn BCFM	0.278	0.3
U.S. No. 3 Corn BCFM	0.321	0.3
U.S. No. 1 Wheat Defects	0.697	0.7
U.S. No. 2 Wheat Defects	0.921	0.9
U.S. No. 1 Soybean FM	0.217	0.2
U.S. No. 2 Soybean FM	0.308	0.3
Soybean Moisture	0.248	0.2

Based on the information contained in Table 1, FGIS cannot statistically justify increasing the breakpoints as requested by the exporters except for soybean moisture. Because the calculated soybean moisture breakpoint is extremely close to a midpoint before rounding, FGIS will increase the breakpoint by one tenth of a percentage point. The proposed breakpoint of 0.2 will be increased to 0.3. Therefore, the breakpoints will remain as proposed except for soybean moisture which will be increased by one-tenth.

The proposed breakpoint table for wheat special grades and factors contained breakpoints for White wheat subclasses. After the shiplot inspection plan proposal was published for comment, FGIS published a final rule on November 27, 1989, (54 FR 48735) which amended the United States Standards for Wheat. This final rule replaced the single class White wheat with two classes, Hard White wheat and Soft White wheat. This final rule was effective May 1, 1990, and established three Soft White wheat subclasses Soft White wheat, White Club wheat, and Western White wheat.

In order to conform with the new standards, FGIS is revising Table 24. The subclass Hard White wheat is removed from this breakpoint table

because Hard White wheat will not have subclasses. The final breakpoint values for the other subclasses are the same as the remaining wheat subclass breakpoints as proposed. The table has been revised to conform to the language of the definitions of the new subclasses.

Review Inspections

The proposed rule included provisions for (1) averaging inspection results unless a material error is detected; (2) limiting the number of field review inspections (reinspection or appeal inspection) to one; and (3) limiting review inspection requests to sublots designated as a material portion or the entire lot. The proposal included defining a material error as a change of more than two standard deviations in inspection results when results are compared.

The majority of commenters supported these proposed changes. However, some commenters expressed concerns about the proposed review inspection process. In summary the general concerns included (1) restricting the review inspection process under the proposed plan would create an imbalance in the national inspection system between domestic grain movements and export grain movements; (2) limiting the number of review inspections violates statistical principles; and (3) a material error should be defined as a one standard deviation change. FGIS disagrees with these latter comments.

These comments suggested that the proposal would cause an imbalance between domestic and export movements. Nearly all domestic grain movements are inspected using an inspection process known as the single lot inspection. This inspection process, unlike the shiplot inspection plan, does not permit the use of tolerances or breakpoints. The shiplot inspection plan utilizes breakpoints to efficiently determine grain quality Limiting the number of review inspections for export shipments is justified because domestic grain movements are not inspected with tolerances or breakpoints. The proposed action would provide for more balance between the two types of movements rather than creating an imbalance suggested by the commenters.

Some commenters indicated the proposal to limit the number of review inspections contradicts statistical principles. They indicated increasing the sample size improves the estimate of grain quality

FGIS determined that although it is true that increasing the sample size improves the estimate of grain quality; reviewing only questionable sublots introduces a bias into the inspection plan. Since review inspections usually are requested when a shipper is dissatisfied with the original inspection result, statistical principles support letting the original result stand unless it is in error. Averaging review results with original results would reduce the degree of any bias in the inspection plan.

Reviewing all sublots in a lot for all factors is more statistically sound because all sublots (acceptable quality and unacceptable quality) are handled the same way and are subjected to the same probabilities. This procedure negates any bias introduced through the review inspection process. Therefore, this provision was included as part of the proposed rule.

Some commenters indicated the definition of a material error should be a more than one standard deviation change in results rather than the proposed more than two standard deviation change. FGIS evaluated the impact of using a more than one standard deviation change as a material error definition. The more than one standard deviation definition does not improve the effectiveness of the shiplot inspection plan as much as the more than two standard deviation change because averaging does not occur as often. The current practice of replacing original inspection results with review results remains virtually unchanged when more than one standard deviation material error definition is used.

After considering all available information including the comments received regarding this part of the proposal, FGIS is adopting the review inspection requirements as proposed. Review inspection results will be averaged unless a material error is detected and field reviews will be limited to one. A material error will be defined as a more than two standard deviation change in inspection results. Review inspections will be permitted for only material portion sublots or the entire lot. However applicants may request a reinspection, appeal inspection, and Board appeal inspection of the entire lot. If this option is requested, review inspection results will not be averaged but will replace original inspection results.

Material Portions

The regulations define a material portion as a portion of a lot which, in accordance with the inspection plans prescribed in the instructions, is considered inferior to the contract or declared grade The current shiplot inspection plan defines a material portion as one sublot. In discussions with the industry, FGIS recommended designating the material portion as a series of sublots from the sublot exceeding the breakpoint back to, but not including, the last sublot inspected having a zero cusum value. However, after further review, FGIS proposed to designate the material portion to include the sublot exceeding the breakpoint plus all previously consecutive sublots exceeding the same contracted grade factor limit back to, but not including, the last sublot loaded within the contracted grade for the factor in question.

Exporters and export associations commenting on this change unanimously opposed this proposed designation of a material portion. They indicated this proposed change would dramatically increase operating costs. However, no specific amounts are mentioned. They recommended defining the material portion as the sublot which exceeds the breakpoint. They further suggested that FGIS implement the other changes of the proposed plan for a one year period before proposing other changes with regard to material portions.

Some foreign buyers and producers commented that breakpoints should not be used and a material portion should be any sublot exceeding the contract specification.

Producer associations further indicated support to modify the material portion designation using alternate rules and procedures; but, they believed the performance of alternate inspection plan procedures should be similar to the proposed rule as measured by the OC curve.

Two commenters suggested alternative options to replace the proposed material portion designation. Both suggested alternatives would designate the material portion as the sublot exceeding the breakpoint value while incorporating other inspection procedures.

One commenter suggested replacing the proposed material portion designation with further restrictions on review inspections. The commenter recommended limiting the number of material portion sublots reviewed. The commenter suggested limiting the review to 10 percent of the entire lot. For example, a lot expecting to contain 20 sublots would be permitted to have two material portion sublots reviewed. This suggestion would not permit the review of any other material portions observed during loading after two sublots are reviewed.

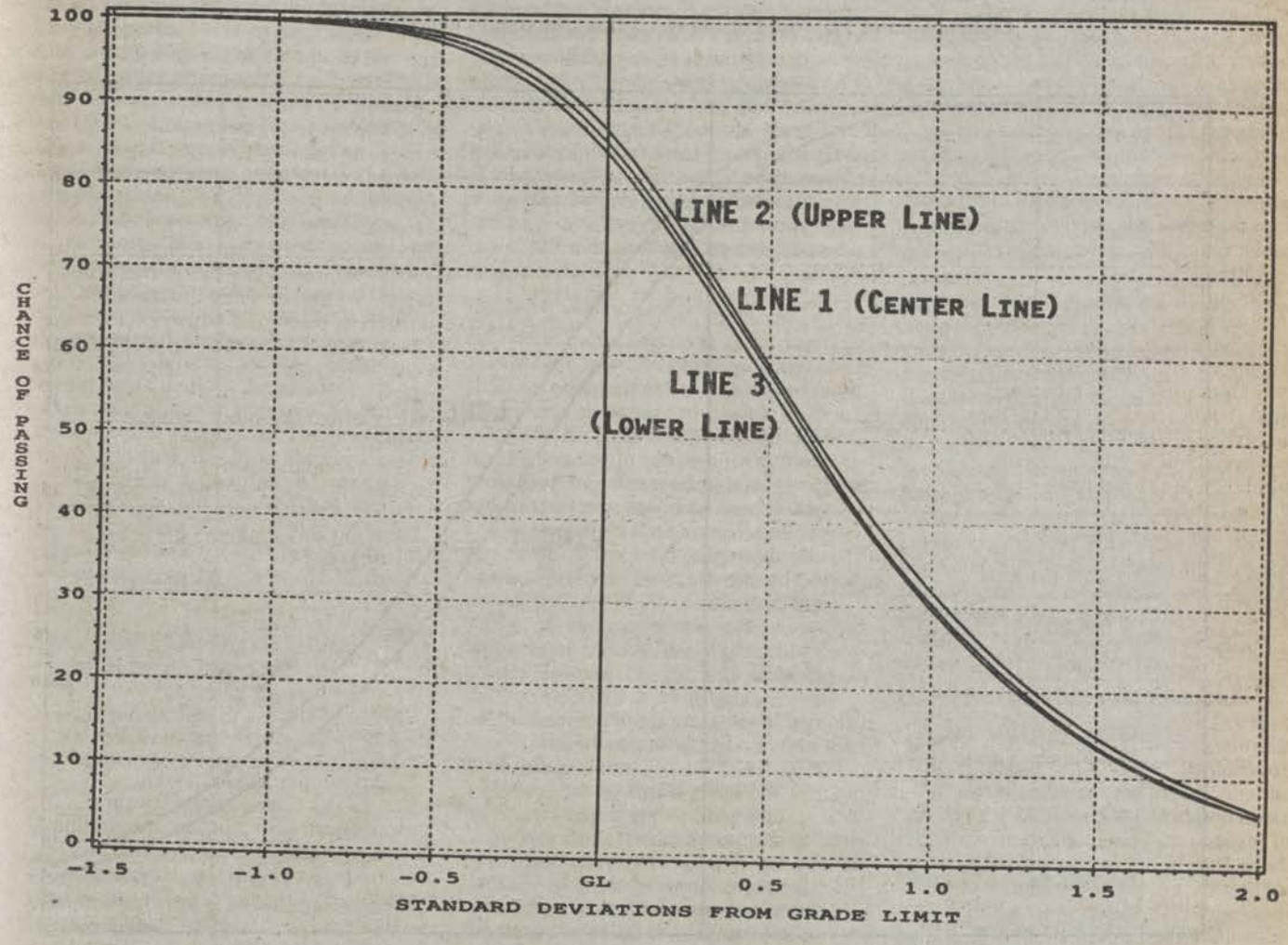
The other commenter recommended substituting the proposed averaging rule with a replacement rule as an

alternative to the proposed material portion designation. This recommendation would compare the review inspection result with the original inspection result. If a material error is detected, the review result will replace the original result. If a material error is not detected, the original result will remain.

Figure 3 illustrates a comparison of alternate inspection plans to the proposed inspection plan.

FIGURE 3

Alternate Plans Compared to Proposed Plan (Maximum Field Reviews)



Line 1 is the FGIS proposed inspection plan; Line 2 is the suggested alternative inspection plan which limits the number of material portions reviewed to 10 percent of the total lot; and Line 3 is the suggested alternative inspection plan which replaces results rather than averaging results.

Figure 3 indicates the performance of the two alternative plans are similar to the proposed plan. The FGIS proposed plan (Line 1) crosses the grade limit at approximately 85 percent chance of passing. The recommended plan to limit the number of review inspections to 10 percent of the lot (Line 2) crosses the grade limit at approximately 87 percent chance of passing. The recommended plan to replace original results if a material error is observed (Line 3) crosses the grade limit at approximately 84 percent chance of passing.

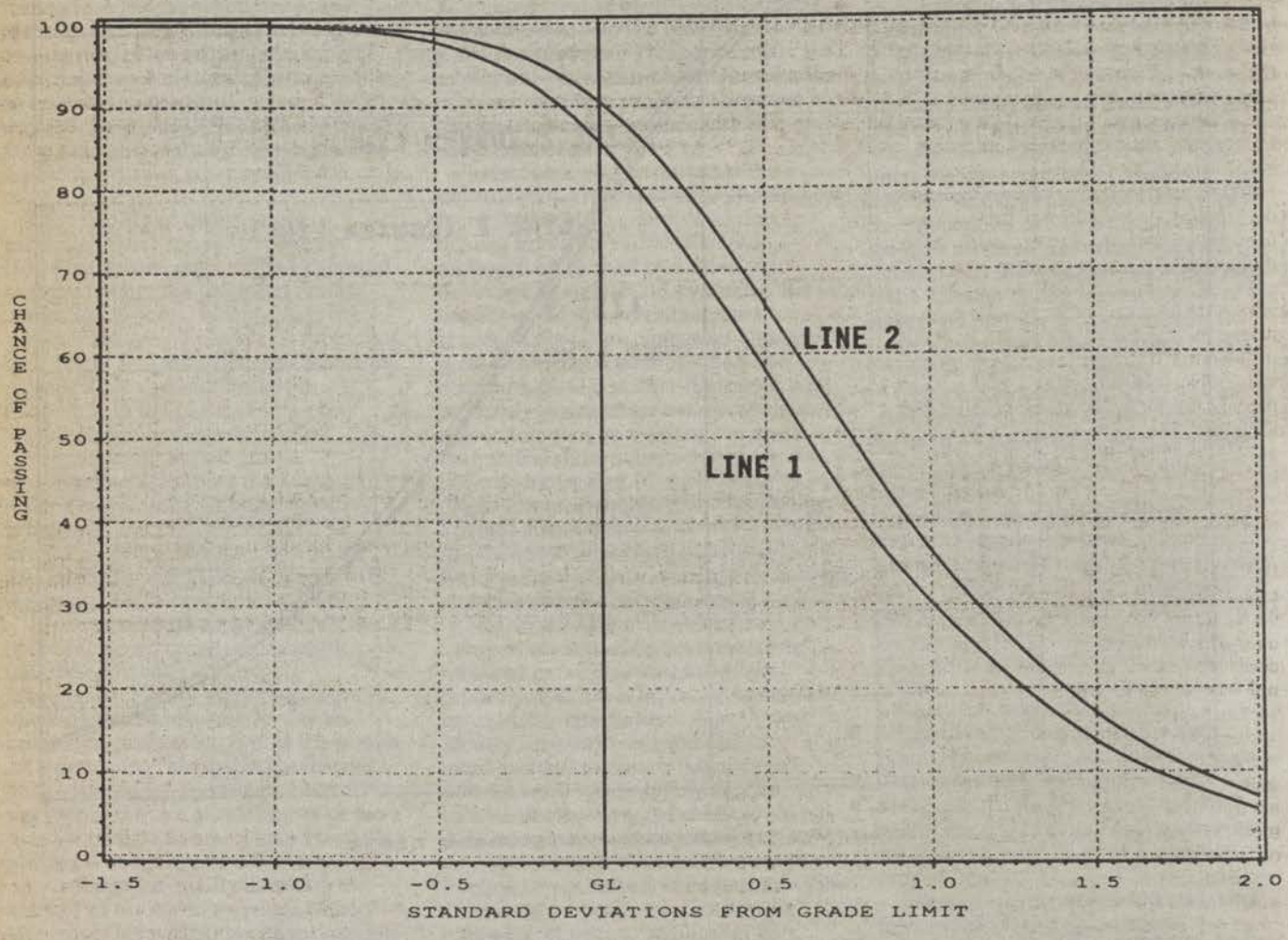
After evaluating all available information including comments regarding the proposed material portion designation, FGIS is not adopting the proposed material portion designation because alternatives in the comments were presented which merit further review before reaching any final decision concerning this matter. The alternatives presented in the comments could reduce cost to the industry, when compared to the proposed material portion designation, by reducing the number of sublots that would be required to be off-loaded if a material portion was declared. Therefore, no change to the material portion designation will be made at this time. The material portion will continue as the sublot exceeding the breakpoint. In response to the comments received from foreign buyers, FGIS will provide necessary inspection services for sales contracts that include provisions which require all sublot inspection results to meet contract specifications.

By not including the proposed material portion designation as a change to the inspection plan, the probability of acceptance at the grade limit is slightly larger than that of the proposed plan as illustrated in Figure 4. Although the OC curve is different from the proposed curve, the overall inspection plan is improved with respect to performance. Thus, the integrity of the inspection plan would be maintained.

The inspection plan with the proposed material portion designation crosses the grade limit at approximately 85 percent acceptance (Line 1). The inspection plan crosses the grade limit at approximately 90 percent acceptance when all other proposed changes, except the material portion designation, are implemented (Line 2).

FIGURE 4

Comparision of Material Portion Definition (Maximum Field Reviews)



FGIS will continue its evaluation of the inspection plan. This evaluation will include a review and discussion of the alternate recommendations received as part of the comments to the proposal.

In addition, FGIS is including in the text of the definition of material portion which appears in § 810.0(b)(55) language that reflects the current procedures concerning designating a material portion. Subsamples, components, and sublots are referenced. This will further clarify the regulations in connection with that definition.

Protein

FGIS proposed including wheat protein determinations under the same inspection plan as other grading factors. The proposal provided for one inspection plan and would better determine protein uniformity within the lot. The proposal required the use of a breakpoint and starting value whenever a contract specifies minimum or maximum protein limits for wheat shipments. Additionally, a certificate statement indicating the range of protein for the lot would be used whenever the range exceeds 1.0 percentage point and the contract did not specify a specific acceptable range. The breakpoint and starting value is not required for average or ordinary protein shipment; however, the inspection certificate will show the range statement if the range exceeds 1.0 percentage point.

Producers commenting on this proposal indicated their support to include protein under the shiplot inspection plan. They cited improved uniformity, additional quality assurance, and improved competitiveness in international trade as reasons for adopting this proposal.

Exporters commenting on this proposal opposed including protein under the shiplot inspection plan; but, they supported revising the Protein Uniformity Inspection Plan to try to obtain better protein uniformity within a lot. They suggested revising the Protein Uniformity Inspection Plan to require that at least two out of every five sublots are within the contracted protein specifications. They commented that the inclusion of wheat protein under the shiplot inspection plan would force them to ship protein of a higher quality than contracted and would not increase the protein uniformity of export lots. FGIS disagrees with these comments.

FGIS has determined that placing wheat protein under the shiplot inspection plan will improve the protein uniformity of export lots. The breakpoint value prevents excessive fluctuations of protein below the contracted amount. Exporters implied uniformity is not gained because of the 1.0 percent range rule. However, excessively high protein would generally be controlled by the marketplace.

The exporters' suggestion of limiting the number of sublots exceeding contract specifications within a consecutive run could increase the overall percentage of sublots meeting contract specifications. However, it does not control the degree of change from sublot to sublot nor does it adequately control the clustering of low protein sublots during loading. The exporters' recommendation for change is not acceptable because it is simply a modified average plan with no controls on variability.

After considering all available information including the comments received, FGIS has concluded that including wheat protein into the shiplot inspection plan as proposed improves protein uniformity.

The American Soybean Association indicated their support to include soybean oil and protein under the shiplot inspection plan; however, FGIS will not implement inspection tolerances for these tests at this time. This information was previously announced in the August 16, 1989, **Federal Register** (54 FR 33702) announcing the testing service as official criteria. FGIS will evaluate testing performance and review contract requirements for a minimum of one year before considering proposing to establish breakpoint values for these factors. This will allow for the collection and review of inspection data in order to calculate the standard deviations of the tests. This statistical information would be necessary when establishing breakpoint values.

Therefore, as announced in the August 16, 1989, publication for soybean shipments, inspection personnel will test each sublot for protein and/or oil when testing is requested and certificate the average of the sublot results until breakpoints are established. Limits on individual sublots will not be applied unless the contract specifies that no sublot shall fall below or exceed a given protein and/or oil value. In such cases, each sublot must meet the contract specification. Any sublot not meeting the specification would be considered a material portion.

Optional Component Sample Inspections

FGIS proposed to provide, upon request, component inspection analysis under the following conditions: (1) A minimum of three component samples must comprise the sublot, (2) sublot sizes may be increased to a maximum of 120,000 bushels based on the loading characteristic of the elevator and the size of the shiplot, (3) reduced factor breakpoints will be implemented based on the number of components in the sublot, (4) component sample inspections will be limited to critical grading factors (factors which usually determine grade or contract compliance), and (5) component sample results will be required to be within the "one grade" limit.

Opposing comments were not received regarding this proposal. Exporters did express their opinion that few exporters would request this service because of the expected additional inspection costs and the use of smaller breakpoints. FGIS is adopting this portion of the proposed rule.

Miscellaneous Changes

Several miscellaneous changes are made in this final rule that reflect changes to the text of the proposed rule. These changes are made for clarity or to correct information contained in several of the tables. For example, in proposed § 800.86, Table 2, the minimum limits for Two-rowed Malting barley should have appeared as negative numbers. In Table 13 of that section, the maximum limits for rye breakpoints for total damaged kernels should have appeared as positive numbers. These changes are made in the final rule. For clarity, references in the tables to "Same as the instructions" for grade limits for infested, treated, and bleached are changed to reference the appropriate sections of the standards. Other miscellaneous changes made for clarity include changes to the format of several of the tables and deletion of unnecessary footnotes. In addition, a clarifying change is made to § 800.125(a) to reference as an exception § 800.86(c)(5). The change would provide that any person may request a reinspection or review of weighing service except as provided in § 800.86(c)(5). Section 800.0(b)(55) is changed to include a subsample, component, and sublot in the material portion definition.

Final Plan Provisions

In summary, FGIS will: (1) Establish new breakpoints; (2) limit review inspections of material portions to one field review; (3) require the averaging of review inspection results unless a material error is detected; (4) define a material error as a difference of more than two standard deviations; (5) continue to designate a material portion as the single sublot exceeding the breakpoint value; (6) include wheat protein under the shiplot inspection plan for shipments specifying a minimum or maximum amount of protein; (7) require a special certificate statement when the protein range of a wheat lot exceeds 1.0 percentage point; and (8) offer component sample analysis as an optional inspection service.

List of Subjects in 7 CFR Part 800

Administrative practice and procedure, Export, Grain.

For the reasons set out in the preamble, 7 CFR part 800 is amended as follows:

PART 800—[AMENDED]

1. The authority citation for part 800 continues to read as follows:

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended, (7 U.S.C. 71 *et seq.*)

2. Section 800.0(b)(55) is revised to read as follows:

§ 800.0 Meaning of terms.

* * * * *

(b) * * *

(55) *Material portion.* A subsample, component, or sublot which is determined to be inferior to the contract or declared grade. A subsample is a material portion when it has sour, musty, or commercially objectionable foreign odors, when it is heating; or when it is of distinctly low quality. A component is a material portion when it is infested or when it is determined to

be inferior in quality by more than one numerical grade to the contract or declared grade. A sublot is a material portion when a factor result causes a breakpoint to be exceeded or when a factor result exceeds specific sublot contract requirements. A sublot designated a material portion shall include only one sublot.

* * * * *

3. Section 800.86 is revised to read as follows:

§ 800.86 Inspection of shiplot, unit train, and lash barge grain in single lots.

(a) *General.* Official inspection for grade of bulk or sacked grain aboard, or being loaded aboard, or being unloaded from a ship, unit train, or lash barges as a single lot shall be performed according to the provisions of this section and procedures prescribed in the instructions.

(b) *Application procedure.* Applications for the official inspection of shiplot, unit train, and lash barges as a single lot shall:

(1) Be filed in advance of loading or unloading;

(2) Show the estimated quantity of grain to be certificated;

(3) Show the contract grade and official criteria if applicable; and

(4) Identify the carrier and stowage area into which the grain is being loaded, or from which the grain is being unloaded, or in which the grain is at rest.

(c) *Inspection procedures.*—(1) *General information.* Shiplot, unit train, and lash barge grain officially inspected as a single lot shall be sampled in a reasonably continuous operation. Representative samples shall be obtained from the grain offered for inspection and inspected and graded in accordance with a statistical acceptance sampling and inspection plan according to the provisions of this section and procedures prescribed in the instructions.

(2) *Tolerances.* The probability of accepting or rejecting portions of the lot during loading or unloading is dependent on inspection results obtained from preceding portions and the applied breakpoints and procedures. Breakpoints shall be periodically reviewed and revised based on new estimates of inspection variability. Tables 1 through 24 list the breakpoints for all grains.

TABLE 1.—GRADE LIMITS (GL) AND BREAKPOINTS (BP) FOR SIX-ROWED MALTING BARLEY AND SIX-ROWED BLUE MALTING BARLEY

Grade	Minimum Limits of—						Maximum Limits of)									
	Test weight per bushel (pounds)		Suitable malting type (percent)		Sound barley [1] (percent)		Damaged kernels [1] (percent)		Foreign material (percent)		Other grains (percent)		Skinned and broken kernels (percent)		Thin barley (percent)	
	GL	BP	GL	BP	GL	BP	GL	BP	GL	BP	GL	BP	GL	BP	GL	BP
U.S. No. 1	47.0	−0.5	95.0	−1.3	97.0	−1.0	2.0	0.8	1.0	0.4	2.0	0.8	4.0	1.1	7.0	0.6
U.S. No. 2	45.0	−0.5	95.0	−1.3	94.0	−1.4	3.0	0.9	2.0	0.4	3.0	0.9	6.0	1.4	10.0	0.9
U.S. No. 3	43.0	−0.5	95.0	−1.3	90.0	−1.6	4.0	1.1	3.0	0.4	5.0	1.3	8.0	1.5	15.0	0.9

[1] Injured-by-frost kernels and injured-by-mold kernels are not considered damaged kernels or scored against sound barley.

NOTE: Six-rowed barley that meets the requirements of U.S. No. 1 to U.S. No. 3, inclusive, for the subclasses Six-rowed Malting barley and Six-rowed Blue Malting barley is classified and graded according to the requirements in this section. Otherwise, it will be graded according to the requirements in § 810.206.

TABLE 2.—GRADE LIMITS (GL) AND BREAKPOINTS (BP) FOR TWO-ROWED MALTING BARLEY

Grade	Minimum limits of—						Maximum limits of—							
	Test weight per bushel (pounds)		Suitable malting types (percent)		Sound barley [1] (percent)		Wild oats (percent)		Foreign material (percent)		Skinned and broken kernels (percent)		Thin barley (percent)	
	GL	BP	GL	BP	GL	BP	GL	BP	GL	BP	GL	BP	GL	BP
U.S. No. 1 Choice	50.0	−0.5	97.0	−1.0	98.0	−0.8	1.0	0.6	0.5	0.1	5.0	1.3	5.0	0.4
U.S. No. 1	48.0	−0.5	97.0	−1.0	98.0	−0.8	1.0	0.6	0.5	0.1	7.0	1.3	7.0	0.5
U.S. No. 2	48.0	−0.5	95.0	−1.3	96.0	−1.1	2.0	0.8	1.0	0.4	10.0	1.8	10.0	0.9
U.S. No. 3	48.0	−0.5	95.0	−1.3	93.0	−1.1	3.0	0.9	2.0	0.4	10.0	1.8	10.0	0.9

[1] Injured-by-frost kernels and injured-by-mold kernels are not considered damaged kernels or scored against sound barley.

NOTE: Two-rowed barley that meets the requirements of U.S. No. 1 Choice to U.S. No. 3, inclusive, for the subclass Two-rowed Malting barley is classified and graded according to the requirements in this section. Otherwise, it will be graded according to the requirements in § 810.206.

TABLE 3.—GRADE LIMITS (GL) AND BREAKPOINTS (BP) FOR SIX-ROWED BARLEY, TWO-ROWED BARLEY, AND BARLEY

Grade	Minimum limits of—				Maximum limits of—									
	Test weight per bushel (pounds)		Sound barley (percent)		Damaged kernels [1] (percent)		Heat-damaged kernels (percent)		Foreign material (percent)		Broken kernels (percent)		Thin barley (percent)	
	GL	BP	GL	BP	GL	BP	GL	BP	GL	BP	GL	BP	GL	BP
U.S. No. 1	47.0	−0.5	97.0	−1.1	2.0	0.8	0.2	0.1	1.0	0.4	4.0	1.0	10.0	0.9
U.S. No. 2	45.0	−0.5	94.0	−1.4	4.0	1.0	0.3	0.1	2.0	0.4	8.0	1.5	15.0	0.9
U.S. No. 3	43.0	−0.5	90.0	−1.6	6.0	1.4	0.5	0.2	3.0	0.5	12.0	1.8	25.0	1.3
U.S. No. 4 [2]	40.0	−0.5	85.0	−2.2	8.0	1.5	1.0	0.5	4.0	0.5	18.0	1.8	35.0	1.9
U.S. No. 5	36.0	−0.5	75.0	−2.2	10.0	1.8	3.0	0.6	5.0	0.6	28.0	2.4	75.0	2.3

[1] Includes heat-damaged kernels. Injured-by-frost kernels and injured-by-mold kernels are not considered damaged kernels.

[2] Barley that is badly stained or materially weathered shall be graded not higher than U.S. No. 4.

TABLE 4.—BREAKPOINTS FOR BARLEY SPECIAL GRADES AND FACTORS

Special grade or factor	Grade limit	Breakpoint
Dockage	0.99 or above	0.47
Two-rowed Barley	Not more than 10.0% of Six-rowed in Two-rowed.	1.8
Six-rowed Barley	Not more than 10.0% of Two-rowed in Six-rowed.	1.8
Malting (Blue Aleurone Layers).	Not less than 90.0%.	−1.3
Malting (White Aleurone Layers).	Not less than 90.0%.	−1.3
Smutty	More than 0.02%	0.06
Garlicky	3 or more in 500 grams.	2⅓
Ergoty	More than 0.10%	0.13
Infested	Same as in § 810.107.	0
Blighted	More than 4.0%	1.1
Injured-by-Frost Kernels.	Not more than 1.9%.	0.1
Injured-by-heat Kernels.	Not more than 0.2%.	0.04
Frost-damaged Kernels.	Not more than 0.4%.	0.05
Heat-damaged Kernels.	Not more than 0.1%.	0.1
Other Grains	Not more than 25.0%.	2.4
Moisture	As specified by contract or load order grade.	0.5

TABLE 5.—GRADE LIMITS (GL) AND BREAKPOINTS (BP) FOR CORN

Grade	Minimum test weight per bushel (pounds)		Maximum limits of—					
			Damaged kernels					
			Heat-damaged kernels (percent)		Total (percent)		Broken corn and foreign material (percent)	
	GL	BP	GL	BP	GL	BP	GL	BP
U.S. No. 1	56.0	−0.4	0.1	0.1	3.0	1.0	2.0	0.2
U.S. No. 2	54.0	−0.4	0.2	0.2	5.0	1.3	3.0	0.3
U.S. No. 3	52.0	−0.4	0.5	0.3	7.0	1.5	4.0	0.3
U.S. No. 4	49.0	−0.4	1.0	0.5	10.0	1.8	5.0	0.4
U.S. No. 5	46.0	−0.4	3.0	0.9	15.0	2.1	7.0	0.4

TABLE 6.—BREAKPOINTS FOR CORN SPECIAL GRADES AND FACTORS

Special grade or factor	Grade limit	Breakpoint
Flint	95 percent or more of flint corn	−1.0
Flint and Dent	More than 5 percent, but less than 95 percent of flint corn	1.0 or −1.0
Infested	Same as in § 810.107	0
Corn of other colors:		
White	Not more than 2.0 percent	0.8
Yellow	Not more than 5.0 percent	1.0
Waxy	95 percent or more	−3.0
High BCFM	As specified by contract or load order grade	10 percent of the load order grade
Moisture	As specified by contract or load order grade	0.4

TABLE 7.—GRADE LIMITS (GL) AND BREAKPOINTS (BP) FOR FLAXSEED

Grade	Minimum test weight per bushel (pounds)		Maximum limits of-damaged kernels			
			Heat-damaged kernels (percent)		Total (percent)	
	GL	BP	GL	BP	GL	BP
U.S. No. 1	49.0	-0.1	0.2	0.1	10.0	0.9
U.S. No. 2	47.0	-0.1	0.5	0.1	15.0	1.1

TABLE 8.—BREAKPOINTS FOR FLAXSEED SPECIAL GRADES AND FACTORS

Special grade or factor	Grade limit	Breadpoint
Moisture	As specified by load order or contract grade	0.4
Dockage	0.99 percent or above	0.32

TABLE 9.—GRADE LIMITS (GL) AND BREAKPOINTS (BP) FOR MIXED GRAIN

Grade	Maximum Limits of—				
	Moisture (percent)	Damaged kernels			
		Total (percent)		Heat-damaged kernels (percent)	
		GL	BP	GL	BP
U.S. Mixed Grain	16.0	15.0	0.6	3.0	0.4

Note: There is no tolerance for U.S. Sample grade Mixed Grain.

TABLE 10.—BREAKPOINTS FOR MIXED GRAIN SPECIAL GRADES AND FACTORS

Special grade or factor	Grade limit	Breakpoint
Smutty	15 or more in 250 grams (wheat, rye, or triticale predominates).	6
	More than 0.2% (all other mixtures).	0.05
Ergoty	More than 0.30% (rye wheat predominates).	0.13
	More than 0.10% (all other mixtures).	0
Garlicky	2 or more per 1,000 grams (wheat, rye, or triticale predominates).	1
	4 or more per 500 grams (all other mixtures).	2
Infested	Same as in § 810.107.	0
Blighted	More than 4.0% (barley predominates).	1.1
Treated	Same as in § 810.805.	0
Moisture	As specified by contract or load order grade.	0.5

TABLE 11.—GRADE LIMITS (GL) AND BREAKPOINTS (BP) FOR OATS

Grade	Minimum limits of—				Maximum limits of—					
	Test weight per bushel (pounds)		Sound Oats (percent)		Heat-damaged kernels (percent)		Foreign material (percent)		Wild Oats (percent)	
	GL	BP	GL	BP	GL	BP	GL	BP	GL	BP
U.S. No. 1	36.0	−0.5	97.0	−0.8	0.1	0.1	2.0	0.4	2.0	0.6
U.S. No. 2	33.0	−0.5	94.0	−1.2	0.3	0.4	3.0	0.4	3.0	0.8
U.S. No. 3 [1]	30.0	−0.5	90.0	−1.4	1.0	0.5	4.0	0.5	5.0	1.1
U.S. No. 4 [2]	27.0	−0.5	80.0	−1.9	3.0	0.8	5.0	0.5	10.0	1.4

[1] Oats that are Slightly Weathered shall be graded not higher than U.S. No. 3.
[2] Oats that are Badly Stained or Materially Weathered shall be graded not higher than U.S. No. 4.

TABLE 12.—BREAKPOINTS FOR OATS SPECIAL GRADES AND FACTORS

Special grade or factors	Grade limit	Breakpoint
Heavy	38 pounds or more.	−0.5
Extra Heavy	40 pounds or more.	−0.5
Moisture	As specified by contract or load order grade.	0.5
Thin	More than 20.0%	0.5
Smutty	More than 0.2%	0.05
Ergoty	More than 0.10%	0.10
Garlicky	4 or more in 500 grams.	2⅓
Infested	Same as in § 810.107.	0
Bleached	Same as in § 810.1005.	0

TABLE 13.—GRADE LIMITS (GL) AND BREAKPOINTS (BP) FOR RYE

Grade	Minimum test weight per bushel (pounds)		Maximum limits of—									
			Foreign Material				Damaged kernels(percent)				Thin rye (percent)	
			Foreign matter other than wheat (percent)		Total (percent)		Heat-damaged (percent)		Total (percent)			
	GL	BP	GL	BP	GL	BP	GL	BP	GL	BP	GL	BP
U.S. No. 1	56.0	−0.5	1.0	0.4	3.0	0.8	0.2	0.1	2.0	0.8	10.0	0.6
U.S. No. 2	54.0	−0.5	2.0	0.5	6.0	1.1	0.2	0.1	4.0	1.1	15.0	0.8
U.S. No. 3	52.0	−0.5	4.0	0.8	10.0	1.4	0.5	0.4	7.0	1.4	25.0	0.9
U.S. No. 4	49.0	−0.5	6.0	0.8	10.0	1.4	3.0	0.8	15.0	2.0		

TABLE 14.—BREAKPOINTS FOR RYE SPECIAL GRADES AND FACTORS

Special grade or factor	Grade limit	Breakpoint
Moisture	As specified by contract or load order grade.	0.3
Light Garlicky	2 or more per 1,000 grams.	1⅛
Garlicky	More than 6 per 1,000 grams.	7⅛

TABLE 14.—BREAKPOINTS FOR RYE SPECIAL GRADES AND FACTORS—Continued

Special grade or factor	Grade limit	Breakpoint
Ergoty	More than 0.30%	0.10
Plump	Not more than 5.0% through 0.064×3/8 sieve.	0.5
Light Smutty	More than 14 per 250 grams.	6

TABLE 14.—BREAKPOINTS FOR RYE SPECIAL GRADES AND FACTORS—Continued

Special grade or factor	Grade limit	Breakpoint
Smutty	More than 30 per 250 grams.	10
Infested	Same as in § 810.107.	0
Dockage	0.99% or above	0.32

TABLE 15.—GRADE LIMITS (GL) AND BREAKPOINTS (BP) FOR SORGHUM

Grade	Minimum test weight per bushel (pounds)		Maximum Limits of—					
			Damaged kernels				Broken kernels, foreign material, and other grains (percent)	
			Heat-damaged (percent)		Total (percent)			
	GL	BP	GL	BP	GL	BP	GL	BP
U.S. No. 1	57.0	−0.4	0.2	0.1	2.0	1.1	4.0	0.8
U.S. No. 2	55.0	−0.4	0.5	0.4	5.0	1.8	8.0	0.9
U.S. No. 3 [1]	53.0	−0.4	1.0	0.5	10.0	2.3	12.0	1.3
U.S. No. 4	51.0	−0.4	3.0	0.8	15.0	2.8	15.0	1.5

[1] Sorghum which is distinctly discolored shall be graded not higher than U.S. No. 3.

TABLE 16.—BREAKPOINTS FOR SORGHUM SPECIAL GRADES AND FACTORS

Special grade or factors	Grade Limit	Breakpoint
Class		
Brown	Not less than 90.0%.	−1.9
Yellow	Not less than 90.0%.	−1.9
White	Not less than 98.0%.	−0.9

TABLE 16.—BREAKPOINTS FOR SORGHUM SPECIAL GRADES AND FACTORS—Continued

Special grade or factors	Grade Limit	Breakpoint
Smutty	20 or more in 100 grams.	8
Infested	Same as in § 810.107.	0
Dockage	0.99% and above	0.32

TABLE 16.—BREAKPOINTS FOR SORGHUM SPECIAL GRADES AND FACTORS—Continued

Special grade or factors	Grade Limit	Breakpoint
Moisture	As specified by contract or load order grade.	0.5

Table 17—GRADE LIMITS (GL) AND BREAKPOINTS (BP) FOR SOYBEANS

Grade	Minimum test weight per bushel (pounds)		Maximum limits of—									
			Damaged kernels				Foreign material (percent)		Splits (percent)		Soybeans of other colors (percent)	
			Heat-damaged (percent)		Total (percent)							
	GL	BP	GL	BP	GL	BP	GL	BP	GL	BP	GL	BP
U.S. No. 1	56.0	−0.4	0.2	0.2	2.0	0.8	1.0	0.2	10.0	1.6	1.0	0.7
U.S. No 2	54.0	−0.4	0.5	0.3	3.0	0.9	2.0	0.3	20.0	2.2	2.0	1.0

Table 17—Grade Limits (GL) and Breakpoints (BP) for Soybeans—Continued

Grade	Minimum test weight per bushel (pounds)		Maximum limits of—									
			Damaged kernels				Foreign material (percent)		Splits (percent)		Soybeans of other colors (percent)	
			Heat-damaged (percent)		Total (percent)							
	GL	BP	GL	BP	GL	BP	GL	BP	GL	BP	GL	BP
U.S. No. 3 [1]	52.0	−0.4	1.0	0.5	5.0	1.2	3.0	0.4	30.0	2.5	5.0	1.6
U.S. No. 4 [2]	49.0	−0.4	3.0	0.9	8.0	1.5	5.0	0.5	40.0	2.7	10.0	2.3

[1] Soybeans which are purple mottled or stained shall be graded not higher than U.S. No. 3.
[2] Soybeans which are materially weathered shall be graded not higher than U.S. 4.

Table 18.—Breakpoints for Soybean Special Grades and Factors

Special grade or factor	Grade limit	Breakpoint
Garlicky	5 or more per 1,000 grams	2
Infested	Same as in § 810.107	0
Soybeans of other colors	Not more than 10.0%	2.3
Moisture	As specified by contract or load order grade	0.3

Table 19.—Grade Limits (GL) and Breakpoints (BP) for Sunflower Seed

Grade	Minimum test weight per bushel (pounds)		Maximum limits of—					
			Damaged sunflower seed				Dehulled seed (percent)	
			Heat-damaged (percent)		Total (percent)			
	GL	BP	GL	BP	GL	BP	GL	BP
U.S. No. 1	25.0	−0.5	0.5	0.4	5.0	1.3	5.0	1.3
U.S. No. 2	25.0	−0.5	1.0	0.6	10.0	1.8	5.0	1.3

Table 20.—Breakpoints for Sunflower Seed Special Grades and Factors

Special grade or factor	Grade limit	Breakpoint
Moisture	As specified by contract or load order grade	0.5
Foreign Material	1.25% and less	0.27
	1.26% and above	0.39
Admixture	As specified by contract or load order grade	0.6

Table 21.—Grade Limits (GL) and Breakpoints (BP) for Triticale

Grade	Minimum test weight per bushel (percent)		Maximum limits of—									
			Damaged kernels				Foreign material				Shrunken and broken kernels (percent)		Defects [3] (percent)	
			Heat-damaged (percent)		Total [1] (percent)		Material other than wheat or rye (percent)		Total [2] (percent)					
	GL	BP	GL	BP	GL	BP	GL	BP	GL	BP	GL	BP	GL	BP
U.S. No. 1	48.0	−0.5	0.2	0.1	2.0	0.8	1.0	0.4	2.0	0.6	5.0	0.8	5.0	1.3
U.S. No. 2	45.0	−0.5	0.2	0.1	4.0	1.1	2.0	0.5	4.0	0.9	8.0	0.8	8.0	1.3
U.S. No. 3	43.0	−0.5	0.5	0.4	8.0	1.5	3.0	0.6	7.0	1.2	12.0	1.6	12.0	2.3
U.S. No. 4	41.0	−0.5	3.0	0.8	15.0	2.0	4.0	0.8	10.0	1.4	20.0	2.3	20.0	2.3

[1] Includes heat-damaged kernels.
[2] Includes material other than wheat or rye.
[3] Defects includes damaged kernels (total), foreign material (total), and shrunken and broken kernels. The sum of these three factors may not exceed the limit for defects for each numerical grade.

Table 22.—Breakpoints for Triticale Special Grades and Factors

Special grade or factor	Grade limit	Breakpoint
Garlicky	2 or more per 1,000 grams	1⅓
Ergoty	More than 0.10%	0.1
Smutty	More than 14 per 250 grams	6
Infested	Same as in § 810.107	0
Dockage	0.99% or above	0.32
Moisture	As specified by contract or load order grade	0.5

TABLE 23.—GRADE LIMITS (GL) AND BREAKPOINTS (BP) FOR WHEAT

Grade	Minimum limits of—				Maximum limits of—													
	Test weight per bushel				Damaged Kernels				Foreign material (percent)		Shrunken and broken kernels (percent)		Defects [3] (percent		Wheat of other classes [4]			
	Hard Red Spring wheat or White Club wheat [1] (pounds)		All other classes and subclasses (pounds)		Heat-damaged kernels (percent)		Total [2] (percent)								Contrasting classes (percent)		Total [5] (percent)	
	GL	BP	GL	BP	GL	BP	GL	BP	GL	BP	GL	BP	GL	BP	GL	BP	GL	BP
U.S. No. 1	58.0	−0.3	60.0	−0.3	0.2	0.2	2.0	1.0	0.5	0.2	3.0	0.3	3.0	0.7	1.0	0.7	3.0	1.6
U.S. No. 2	57.0	−0.3	58.0	−0.3	0.2	0.2	4.0	1.5	1.0	0.3	5.0	0.4	5.0	0.9	2.0	1.0	5.0	2.1
U.S. No. 3	55.0	−0.3	56.0	−0.3	0.5	0.3	7.0	1.9	2.0	0.5	8.0	0.5	8.0	1.2	3.0	1.3	10.0	2.9
U.S. No. 4	53.0	−0.3	54.0	−0.3	1.0	0.4	10.0	2.3	3.0	0.6	12.0	0.6	12.0	1.4	10.0	2.3	10.0	2.9
U.S. No. 5	50.0	−0.3	51.0	−0.3	3.0	0.7	15.0	2.7	5.0	0.7	20.0	0.7	20.0	1.5	10.0	2.3	10.0	2.9

[1] These requirements also apply when Hard Red Spring and White Club wheat predominate in a sample of Mixed wheat.
[2] Includes heat-damaged kernels.
[3] Defects include damaged kernels (total), foreign material, and shrunken and broken kernels. The sum of these three factors may not exceed the limit for defects for each numerical grade.
[4] Unclassed wheat of any grade may contain not more than 10.0 percent of wheat of other classes.
[5] Includes contrasting classes.

TABLE 24.—BREAKPOINTS FOR WHEAT SPECIAL GRADES AND FACTORS

Special grade or factor	Grade limit	Break-point
Moisture	As specified by contract or load order grade	0.3
Garlicky	More than 2 per 1,000 grams	1⅓
Light Smutty	More than 14 smut balls per 250 grams	6
Smutty	More than 30 smut balls per 250 grams	10
Infested	Same as in § 810.107	0
Ergoty	More than 0.30%	0.19
Treated	Same as in § 810.2204	0
Dockage	As specified by contract or load order grade	0.20
Protein	As specified by contract or load order grade	0.5
Class and Subclass		
Hard Red Spring:		
DNS	75% or more DHV	−5.0
NS	25% or more DHV but less than 75% DHV	−5.0
Durum:		
HADU	75% or more HVAC	−5.0
ADU	60% or more HVAC but less than 75% of HVAC	−5.0
Soft White:		
SWH	Not more than 10% White Club wheat	2.0
WHCB	Not more than 10% of other Soft White wheat	2.0
WWH	More than 10% WHCB and more than 10% of other Soft White wheat	−3.0
		−3.0

(3) *Grain accepted by the inspection plan.* Grain which is offered for inspection as part of a single lot and accepted by a statistical acceptance sampling and inspection plan according to the provisions of this section and procedures prescribed in the instructions shall be certificated as a single lot provided it was sampled in a reasonably continuous operation. Official factor and official criteria information shown on the certificate shall be based on the weighted or mathematical averages of the analysis of sublots.

(4) *Grain rejected by the inspection plan.* When grain which is offered for inspection as part of a single lot is rejected by the plan or is not sampled in a reasonably continuous operation, the grain in each portion shall be certificated separately. If any portion of grain is not accepted by the plan and designated a material portion, the applicant shall be promptly notified and have the option of:

(i) Removing the material portion from the carrier; or

(ii) Requesting the material portion be separately certificated; or

(iii) Requesting either a reinspection or an appeal inspection of the material portion; or

(iv) Requesting a reinspection service and/or an appeal inspection service on the entire lot.

(5) *Reinspection service and appeal inspection service.* A reinspection or an appeal inspection may be requested on a material portion. A Board appeal inspection may also be requested on a material portion after the reinspection or appeal inspection. A reinspection, an appeal inspection, and a Board appeal inspection may be requested on the total sublots in the lot.

(i) *Material portions.* A material portion designated by the plan may be reinspected or appeal inspected once in the field, but not both, and once at the Board of Appeals and Review. The reinspection or appeal inspection result shall, unless a material error is found, be averaged with the original inspection determination. The Board appeal inspection result shall, unless a material error is found, be averaged with the previous inspection result. The inspection plan tolerances shall be reapplied to the material portion grain to determine acceptance or rejection. If a material error is found, the reinspection or appeal inspection result shall replace the original inspection result or the Board appeal result shall replace the previous inspection result. For purposes of this section, a material error is defined as results differing by more than two standard deviations. Acceptance or

rejection of that portion of grain shall be based on the reinspection or appeal inspection and on the Board appeal inspection result alone when a material error is found.

(ii) *Entire lot.* The applicant may request a reinspection service, an appeal inspection service, and a Board appeal inspection service on the entire lot. Inspection results for these services shall replace the previous inspection results. The tolerances shall be reapplied to all portions of the entire lot to determine acceptance or rejection.

(d) *Infested grain.*—(1) *Available options.* If gain or any portion of grain in a single shiplot, unit train, or lash barge lot is found to be infested, according to the provisions of the Official U.S. Standards for Grain, the applicant shall be promptly notified and have the option of:

(i) Unloading the portion of infested grain from the lot and an additional amount of other grain in common stowage with the infested grain; or

(ii) When applicable, completing the loading and treating all infested grain in the lot; or

(iii) When applicable, treating the infested grain for the purpose of destroying the insects, subject to subsequent examination by official personnel; or

(iv) Continue loading without treating the infested grain, in which case all of the infested grain in the lot and all grain in common stowage areas with the infested grain will be officially certificated as infested according to the provisions of the Official U.S. Standards for Grain.

(2) *Exception.* If infested grain in loaded into common stowage with a lot, or a portion of a lot, which has not been officially certificated as being infested, the applicant loading the infested grain may not use the option in paragraph (d)(1)(i) of this section.

(3) *With treatment.* If infested grain is treated with a fumigant in accordance with the instructions and the treatment is witnessed by official personnel, the official sampling, inspection, grading, and certification of the lot shall continue as though the infested condition did not exist.

(e) *Special certification procedures.*—(1) *Rejected grain.* When grain is rejected by the inspection plan under paragraph (c)(4) of this section, the official inspection certificate for each different portion of different quality shall show:

(i) A statement that the grain has been loaded aboard with grain of other quality;

(ii) The grade, location, or other identification and approximate quanity of grain in the portions; and

(iii) Other information required by the regulations and the instructions.

The requirement of paragraph (e)(1)(i) of this section does not apply to grain that is inspected as it is unloaded from the carrier or to portions loaded in separate carriers or stowage space.

(2) *Common stowage.*—(i) *Without separation.* When bulk grain is offered for official inspection as it is loaded aboard a ship and is loaded without separation in a stowage area with other grain or another commodity, the official inspection certificate for the grain in each lot shall show the kind, the grade, if known, and the location of the other grain, or the kind and location of the other commodity in the adjacent lots.

(ii) *With separation.* When separations are laid between lots, the official inspection certificates shall show the kind of material used in the separations and the locations of the separations in relation to each lot.

(iii) *Exception.* The common stowage requirements of this paragraph are not applicable to the first lot in a stowage area unless a second lot is loaded, in whole or in part, in the stowage area prior to issuing the official inspection certificate for the first lot.

(3) *Protein.* A special statement indicating the actual protein range of a lot shall be shown on the official inspection certificate if the difference between the lowest and highest protein determinations for the lot exceeds 1.0 percent when protein is officially determined and a specific range limit is not established by the contract grade.

(4) *Part lot.* If part of a lot of grain in an inbound carrier is unloaded and part is left in the carrier, the unloaded grain shall be officially inspected and certificated in accordance with the provisions of § 800.84(g).

(5) *Official mark.* If the grain in a single lot is officially inspected for grade as it is being loaded, upon request, the following official mark shall be shown on the inspection certificate: "Loaded under continuous official inspection."

4. Section 800.125(a) is revised to read as follows:

§ 800.125 Who may request reinspection services or review of weighing services.

(a) *General.* Any interested person may request a reinspection or review of weighing service, except as provided for in § 800.86(c)(5). Only one reinspection service or review of weighing service may be performed on any original service. When more than one interested person requests a reinspection or review of weighing service, the first person to file is the applicant of record.

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5. Section 800.129(a)(1) is revised to read as follows:

§ 800.129 Certificating reinspection and review of weighing results.

(a) * * *

(1) *Results of material portion sublots.* When results of a reinspection on a material portion do not detect a material error, they shall be averaged with the original inspection results. For purposes of this section, a material error is defined as results differing by more than two standard deviations. The averaged inspection results shall replace the original inspection results recorded on the official inspection log. Reinspection results shall replace the original inspection results recorded on the official inspection log if a material error is detected. No certificates will be issued unless requested by the applicant or deemed necessary by official personnel.

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6. Section 800.135(9) is revised to read as follows:

§ 800.135 Who may request appeal inspection services.

(a) *General.* Any interested person may request appeal inspection or Board appeal inspection services, except as provided for in § 800.86(c)(5). When more than one interested person requests an appeal inspection or Board appeal inspection service, the first person to file is the applicant of record. Only one appeal inspection may be obtained from any original inspection or reinspection service. Only one Board appeal inspection may be obtained from an appeal inspection. Board appeal inspections will be performed on the basis of the official file sample. Board appeal inspections are not available on stowage examination services.

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7. Section 800.139(b) is revised to read as follows:

§ 800.139 Certificating appeal inspections.

* * * * *

(b) *Results of material portion sublots.* When results of an appeal inspection performed by a field office or the Board of Appeals and Review on a material portion do not detect a material error, they shall be averaged with the previous inspection results recorded on the official inspection log for the identified sample. For purposes of this section, a material error is defined as results differing by more than two standard deviations. The appeal or

Board appeal inspection result shall replace the previous inspection results recorded on the official inspection log for the identified sample if a material error is detected. No certificate will be issued unless requested by the applicant or deemed necessary by inspection personnel.

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Dated: May 1, 1990.

John C. Foltz,

Administrator.

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